

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EMMANUEL CABALLERO,

Case No. 3:19-cv-00079-MMD-CLB

Plaintiff,

v.

ROMEO ARANAS, *et al.*,

ORDER

Defendants.

Before the court is Plaintiff Emmanuel Caballero's ("Caballero") First Amended Complaint ("FAC") (ECF No. 21). Also before the court is Defendant Melissa Mitchell's ("Mitchell") motion to screen the FAC (ECF No. 22) and Caballero's motion to extend time for discovery (ECF No. 23). The court addresses each in turn.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Caballero is an inmate in the custody of the Nevada Department of Corrections (“NDOC”). On February 11, 2019, Caballero filed a civil rights complaint pursuant to 42 U.S.C. § 1983 for events that occurred while Caballero was incarcerated at the Northern Nevada Correctional Center (“NNCC”). (ECF No. 4.) On November 25, 2019, the District Court entered a screening order on Caballero’s complaint (ECF No. 3), allowing Caballero to proceed on an Eighth Amendment deliberate indifference to serious medical needs claim against Defendants Dr. Gene Yup and Mitchell. (See *id.* at 8.) The District Court dismissed, without prejudice, an Eighth Amendment deliberate indifference claim against Sandoval, Dzurenda, Aranas, Naughton, and Baca, as well as an Eighth Amendment excessive force claim. (*Id.* at 8-9.) The case was then stayed 90-days to allow the parties an opportunity to settle. (*Id.* at 9.)

On February 25, 2020, the parties participated in an Early Mediation Conference, however, the parties were unable to reach a settlement. (ECF No. 9.) On February 28, 2020, the Office of the Attorney General filed a status report indicating that settlement

1 had not been reached and informing the Court of its intent to proceed with this action.
2 (ECF No. 10.) Thus, on March 2, 2020, the District Court granted Caballero's *in forma*
3 *pauperis* application and directed the Clerk of the Court to electronically serve the
4 complaint on the Office of the Attorney General. (ECF No. 11.)

5 On March 23, 2020, Mitchell filed her notice of acceptance of service of the
6 original complaint. (ECF No. 12.) Mitchell filed her answer on April 30, 2020. (ECF No.
7 14.) A scheduling order was entered on May 4, 2020, directing Caballero that
8 amendments to pleadings as provided for under Fed. R. Civ. P. 15, if the same are
9 allowed without leave of Court, or motions for leave to amend, shall comply with LR 15-1
10 and shall be filed and served by Monday, July 6, 2020. (See ECF No. 15 at 1-2.) On
11 June 23, 2020, Caballero filed his FAC. (ECF No. 21.) On June 25, 2020, Mitchell filed
12 a motion to screen the FAC. (ECF No. 22.) Also, on June 25, 2020, Caballero filed a
13 motion to extend time for discovery. (ECF No. 23.)

14 **II. FIRST AMENDED COMPLAINT**

15 Federal Rule of Civil Procedure 15(a)(1) allows a party to amend its pleading
16 once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is
17 one to which a responsive pleading is required, 21 days after service of a responsive
18 pleading. Fed. R. Civ. P. 15(a)(2) further instructs that “[i]n all other cases, a party may
19 amend its pleading only with the opposing party’s written consent or the court’s leave.
20 The court should freely give leave [to amend a pleading] when justice so requires,” and
21 there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198
22 F.3d 752, 757 (9th Cir. 1999). Further, LR 15-1 requires a party to attach proposed
23 amended pleadings to a motion seeking leave of court to file an amended pleading.

24 Because Caballero filed his FAC on June 23, 2020—well past 21 days after the
25 answer was filed—Caballero was required to obtain Mitchell’s written consent or leave of
26 court in order to file an amended pleading, which he failed to do. Accordingly, the court
27 will strike Caballero’s FAC for his failure to follow Fed. R. Civ. P. 15(a)(2) and LR 15-1.
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1 **III. MOTION TO SCREEN FAC**

2 After the filing of the FAC, and instead of filing an opposition to the motion,
 3 Mitchell filed a motion to screen the FAC. (ECF No. 22.) Mitchell argues pursuant to 28
 4 U.S.C. § 1915A and the holdings of *Espinosa v. Stogner*, 3:16-cv-00141-RCJ-WGC,
 5 2017 WL 6033412 (D. Nev. Dec. 4, 2017), and *Mwanza v. Foster*, 3:14-cv-00331-MMD-
 6 WGC, 2015 WL 5123410 (D. Nev. Sept. 1, 2015), that the court should screen
 7 Caballero's FAC.¹ (ECF No. 22.) Mitchell argues that Caballero's FAC seeks to add 21
 8 additional Defendants who are either current or former employees of a government entity
 9 to his cause of action, he seeks to revive claims against all five of the previously
 10 dismissed Defendants,² and he adds multiple claims to the causes of action that were
 11 not previously plead. (ECF No. 22 at 4.) While ultimately the motion to screen is moot,
 12 the court will still address Mitchell's arguments.

13 Mitchell first contends that screening is required pursuant to 28 U.S.C. § 1915A,
 14 but does not provide the court with an explanation as to how Caballero's FAC falls within
 15 the confines contemplated by the statute. Section 1915A(a) states as follows with
 16 respect to screening:

17 (a) Screening.—The court shall review, before docketing, if feasible or, in
 18 any event, as soon as practicable after docketing, a complaint in a civil
 19 action in which a prisoner seeks redress from a governmental entity or
 officer or employee of a governmental entity.

20 28 U.S.C. § 1915A(a). The statute could not be clearer as to the timing of the mandatory
 21 screening. A court must screen “before docketing, if feasible or, in any event, as soon
 22 as practicable after docketing.” *Id.* As the Supreme Court has clarified, “[a]ll this may
 23 take place before any responsive pleading is filed—unlike in the typical civil case,
 24 defendants do not have to respond to a complaint covered by the PLRA until required to

25
 26 ¹ Mitchell's Motion does not discuss Fed. R. Civ. P. 15, which undoubtedly governs
 27 Caballero's FAC, as it was filed post-answer.

28 ² The court notes the five defendants referred to by Mitchell were dismissed,
 without prejudice. (See ECF No. 3 at 8-9.)

1 do so by the court, and waiving the right to reply does not constitute an admission of the
2 allegations in the complaint.” *Jones v. Bock*, 549 U.S. 199, 213 (2007); see also
3 *Nordstrom v. Ryan*, 762 F.3d 903, 906, 907 & n.1 (9th Cir. 2014) (characterizing
4 screening under § 1915A as the “pre-answer screening stage”). The screening provision
5 does not require a court, either explicitly or implicitly, to screen every time a plaintiff
6 seeks to amend the complaint.

7 Next, Mitchell discusses *Espinosa v. Stogner*, a case in which the District Court
8 held that screening was required in a case “where amendment has been required due to
9 a deficiency noted during screening of the original complaint....” 3:16-cv-00141-RCJ-
10 WGC, 2017 WL 6033412, at *2 (D. Nev. Dec. 4, 2017). *Espinosa* is distinguishable from
11 the present case, as Caballero was not explicitly granted leave to amend in the original
12 screening order. (See ECF No. 3.) Instead, the District Court determined Caballero
13 could proceed on certain claims but left open the option for amendment later by
14 dismissing his other claims, without prejudice. (*Id.*)

15 Finally, Mitchell cites to *Mwanza v. Foster*, 3:14-cv-00331-MMD-WGC, 2015 WL
16 5123410, at *9 (D. Nev. Sept. 1, 2015), for the assertion that screenings of an inmate’s
17 amended complaint would be determined on a case-by-case basis. Mitchell does not
18 supply the court with any convincing reasons why this is a case that warrants such
19 treatment.

20 To clarify, courts in this district screen complaints and amended complaints at the
21 pre-answer stage. In cases where the court dismisses the initial complaint with leave to
22 amend, the court would then screen the proposed amended complaint to determine what
23 claims may proceed and whether a defendant is compelled to respond. This practice
24 falls within the PLRA’s mandate for “early judicial screening.” *Jones*, 549 U.S. at 223.
25 The decision to engage in post-answer court screening is made on a case-by-case
26 basis. Thus, the fact that some of Mitchell’s cited decisions refer to screening of an
27 amended complaint does not necessarily show that the screening court viewed its duty
28 to screen as mandatory and not discretionary. Nor do those decisions require this court

1 to screen Caballero's proposed amended complaint. Thus, while the court ultimately
2 denies as moot Mitchell's motion to screen (ECF No. 22), the court cautions Mitchell
3 regarding the filing of future motions for screening of amended complaints. If Mitchell
4 has an opposition to a motion to amend, Mitchell is reminded that the proper procedure
5 is to file an opposition with an explanation of why the amendment is opposed. If a
6 proper opposition is not filed, this may result in the court construing the lack of an
7 opposition as a consent to the granting of the motion to amend per Local Rule 7-2(d).

8 **IV. MOTION TO EXTEND TIME FOR DISCOVERY**

9 Finally, Caballero filed a motion to extend time for discovery (ECF No. 23), based
10 on the filing of his FAC. To the extent the motion seeks an extension of discovery based
11 on the improperly filed FAC, that motion is denied. The court will however grant
12 Caballero an extension of time to Monday, July 13, 2020 to file a motion seeking leave of
13 the court to file an amended pleading. At that time, Caballero may also file a further
14 motion to extend time for discovery, if he so chooses.

15 **V. CONCLUSION**

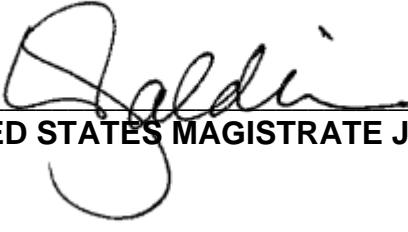
16 **IT IS THEREFORE ORDERED** that Caballero's First Amended Complaint (ECF
17 No. 21) is **STRICKEN** from the record;

18 **IT IS FURTHER ORDERED** that Mitchell's motion to screen the FAC (ECF No.
19 22) is **DENIED AS MOOT**;

20 **IT IS FURTHER ORDERED** that the motion to extend time for discovery (ECF No.
21 23) is **GRANTED**, in part, and **DENIED**, in part; and,

22 **IT IS FURTHER ORDERED** that Caballero will be granted an extension of time
23 until **Monday, July 13, 2020**, to file a motion seeking leave of the court to file an
24 amended pleading.

25 **DATED:** June 29, 2020.

26 
27 **UNITED STATES MAGISTRATE JUDGE**
28